IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION(MAIN) NOS.241, 242 AND 243 OF 2006

Sanatan Sanstha,
A public charitable trust,
registered under I/IV/2,
Ponda, Goa, having its
office at Sanatan Ashram,
Ramnathi, Ponda, Goa
through its truestee
Mr. Virendra Pandurang
Marathe. ... Applicant

versus

1. State of Goa
   through P.P.

2. Smt. Vimal Govind
   Prabhudessai,
   aged 85 years,
   residing at 1/4,
   Namrata Building,
   Cardozo Wado,
   Taleigao, Panaji,
   Goa. ... Respondents

Mr. R. D. Kesarkar, Advocate for the Applicant/s.

Ms. Winnie Coutinho, Public Prosecutor for the State.

Mr. Arun Bras de Sa, Advocate for the Respondent No.2.

CORAM : N. A. BRITTO, J.

DATE : 8TH FEBRUARY, 2007.

ORAL JUDGMENT

These petitions filed under Section 482 of the Code (Code of Criminal Procedure, 1973) can be disposed of as revision petitions filed under Section 397 of the Code. All the three petitions arise from C. C. No.121/04/A and since facts are common, and so also the law applicable thereto, they can be disposed of by this common Judgment.

2. The applicant is the complainant and the private respondents were the accused involved in the said case against whom process was issued by the learned C.J.M. by Order dated 9-9-2005 under Section 500 r/w 34 I.P.C. and which process has been quashed and set aside by the learned Additional Sessions Judge, in revision, filed by the said accused, by Order dated 12-4-2006.

3. The parties hereto shall be referred to in the names as they appear in the cause title of the said complaint.

4. Heard the learned Counsel on behalf of both the parties.

5. The complainant claims to be a Public Charitable Trust having its Office at Sukhsagar, Ponda, Goa, and that it is established to educate people about the science of spirituality by organizing discourses, seminars, workshops, etc. The complainant claims that its seekers have faith in it and it has earned a high reputation in the society in general and in thousands of seekers in particular. The complainant claims that on 15-5-2004, the respondent/A-1 Smt. Vimal Dessai filed a false report with Panaji Police Station against Shri Reshak Gaokar, Shri Dinesh Naik and Shri Rajesh Gaokar, seekers, following their spiritual practice under the guidance of the complainant and thereafter in furtherance of their common intention to defame the complainant, the said respondent/A-1/Vimal Dessai and the respondent/A-2/Dr. Ashutosh Dessai telephoned many

seekers who are carrying on their spiritual practice under its guidance and communicated to them the defamatory statements pertaining to it and its founder Param Pujya Dr. Jayant Balaji Athavale. As per the complainant, false and defamatory statements were made by respondent/A-1 and respondent/A-2 as follows:-

On 15-2-2004, accused no.1 telephoned Mr. Hemant Kale of Madkai, Goa and inter alia, told him that "Saunsthane Gund posle ahahe sodle na gund". On 18-5-2004, accused no.1 telephoned Dr. Manoj Solanki of Madgao, Goa and inter alia told him that "P.P. Dr. Athavale has started sending sadhaks as goondas. In Ponda Ashram scandals are going on, women and ladies folk should not go to Ponda Ashram. Do not take your wife to Ponda Ashram. On 18-5-2004, accused no.1 telephoned Smt. Suma Puthlat of Kochi, Kerala and told her "your sadhaks are behaving like goondas. There are so many young ladies staying in your ashram. Do you know where there is bua(fake spiritualists). There are bais(women) Kundatai is in Bombay and he is enjoying here". On 19-5-2004, accused no.2 telephoned

Bapu Raokar of Raigad of Maharashtra and while talking to him told him that "Sanathanmode gund girich vadli ahai".

6. As far as the respondent/A-3-Deepti Sarvottam Kamat is concerned, the complainant stated that she had aided and abetted the offence of defamation committed by A-1 and A-2 against the complainant.

7. The complainant on or about 15-7-2004 addressed a common notice to all the three accused alleging what has been stated herein above and claiming damages. Each of the accused replied separately denying the allegations made by the complainant.

8. Thereafter, the complaint came to be filed and statement on oath of the complainant recorded. On the basis of the complaint and the statement on oath of the complainant, the learned C.J.M. was pleased to issue process against the accused by Order dated 9-9-2005 which came to be set aside in revision, by the learned Additional Sessions Judge, Panaji.

9. The complainant has challenged the said Order of the learned Additional Sessions Judge in these petitions. There is no dispute that the complaint was filed by the complainant, a Public Charitable Trust, through its Managing Trustee Shri Virendra Marathe and only his statement on oath was recorded and on the basis of the same process was issued by the learned C.J.M. As far as respondent/A-3-Deepti S. Kamat is concerned, whether it is in the complaint or in the statement on oath of the complainant only a sweeping statement was made that the respondent/A-3 aided and abetted the offence of defamation. Aiding and abetting an offence certainly does not attract Section 34 I.P.C. but process was issued against all accused under Section 500 r/w 34 I./P.C. Learned Counsel on behalf of respondent/A-3 submits that A-3/Deepti S. Kamat is a resident of Goa Velha while A-1/Smt.Vimal Dessai who is the mother of A-2/Dr. Ashutosh Dessai are residents of Taleigao, Panaji, Goa, and if, at all the messages were conveyed by the said respondents, namely A-1 and A-2 they were conveyed to the seekers through the telephone and unless the complainant had spelt out the acts from which abetement could be gathered, no

process could have been issued against the respondent/A-3 Deepti S. Kamat. This submission needs to be accepted. It was certainly incumbent upon the complainant to have clearly stated the facts from which inference could be drawn that A-3/Deepti S. Kamat had abetted or aided the respondents/A-1 and A-2 in conveying the telephonic defamatory messages to the said seekers at different places. Process could not certainly have been issued with such a vague statement. The learned Additional Sessions Judge has stated, and in my view rightly, that no where it was made clear in the complaint as to in what manner the respondent/A-3 had aided and abetted the so called offence of defamation committed by the respondent/A-3.

10. The Apex Court in the case of **M/s. Pepsi Food Ltd.** v. **Special Judicial Magistrate**(AIR 1998 SC 128) has made it clear that it is the duty of the Magistrate to examine the nature of allegation made in the complaint and the evidence both oral and documentary in support thereof and to see if it is sufficient for the complainant to succeed in bringing charge home to the accused. The Apex Court has also stated that summoning of an

accused in a criminal case is a serious matter and criminal law cannot be set in motion as a matter of course. In the absence of any acts having been shown to have been committed by the respondent/A-3 from which abetement or aiding towards the respondents/A-1 and A-2 could be inferred in the commission of the offence of defamation, no process could have been issued against the respondent/A-3 and that too with the aid of Section 34 I.P.C. The order of the learned C.J.M. clearly shows non application of mind.

11. Reverting to the case of respondents/A-1 and A-2, the learned Sessions Judge noted that as per the complaint, the so-called defamatory statements were conveyed to the seekers of the complainant, namely S/Shri Kale, Solanki, Puthlat and Raokar in Madkai, Margao, Kochi and Raigad, respectively and the complaint indicated that the said statements were conveyed to the complainant by some of their seekers. The learned Additional Sessions Judge noted that the complainant had not averred in the complaint in clear terms as to which of the seekers informed the complainant about the said so called defamatory statements and in the absence of the examination of

the said seekers to whom the said defamatory statements were conveyed, there was no direct evidence showing the existence of prima facie case against the respondents/A-1 and A-2.

12. The learned Counsel on behalf of the complainant submits that it was not necessary at the stage of issuing process for the complainant to have examined the said seekers to whom the respondents/A-1 and A-2 had conveyed the defamatory messages. The learned Counsel further submits that the said seekers to whom the defamatory statements were conveyed by the respondents/A-1 and A-2 could always be examined in the trial of the case. The learned Counsel further submits that the said seekers to whom the respondents/A-1 and A-2 had conveyed the said defamatory statements, had conveyed the same to the complainant when they visited the complainant. In support of his submission, the learned Counsel has placed reliance on **Nirmaljit Singh Hoon** v. **The State of West Bengal**(AIR 1972 SC 2639) and **Smt. Nagawwa** v. **Veeranna Shivalingappa Konjhalgi and others**(AIR 1976 CRI. L. J. 1533).

13. In the first case, the Apex Court has stated that the

words "sufficient ground" used in Section 203 means the satisfaction that a prima facie case is made out against the person accused, by the evidence of witnesses entitled to a reasonable degree of credit and does not mean sufficient ground for the purpose of conviction. In the second case, the Apex Court has stated that the scope of the inquiry under Section 202 is extremely limited - only to the ascertainment of the truth or falsehood of the allegations made in the complaint - (i) on the materials placed by the complainant before the Court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.

14. On the other hand, the learned Counsel on behalf of the respondents, submits that the sole testimony of the Managing Trustee of the complainant, Shri Marathe could not form the basis of a prima facie case as the complaint as well as his statement on oath are based on hearsay evidence i.e. of seekers to whom the respondents/A-1 and A-2 allegedly

conveyed the defamatory statements and who were not examined by the complainant to support his case. The learned Counsel further submits that the complainant has not stated as to when or through whom he came to know about the said statements which were conveyed by the respondents/A-1 and A-2 to the said seekers at different places, though, in his statement on oath on behalf of the complainant, it is stated that the telephonic calls were conveyed to him and that is how he came to know that the accused had lowered their reputation in the society.

15. On behalf of the complainant, reliance has been placed on **Bhugdomal Gangaram and others** v. **The State of Gujarat**(AIR 1983 SC 906) in support of the proposition that what the said seekers told the complainant would be inadmissible in the absence of the said seekers having been examined in support of the complaint. Reliance is also placed on **Vivek Goenka** v. **State of Maharashtra and another**(2003 ALL MR(Cri) 1735) wherein this Court has stated that while issuing process, the Magistrate is bound to apply his judicial mind to the averments made in the complaint and has to take a judicial

decision whether he should issue the process or not. A Magistrate is not to act mechanically.

16. The law as regards quashing of criminal complaints or process issued is well settled from the time of **R. P. Kapur** v. **State of Punjab**(AIR 1960 SC 866) to **M. Krishnan** v. **Vijay Singh and another**(AIR 2001 SC 3014) wherein the Apex Court has stated that the revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report, even if taken at their face value or accepted in their entirety, do not prima facie disclose the commission of an offence or where the uncontroverted allegations made in the FIR or complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused or the allegations are so absurd and inherently improbable that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings or

where a criminal proceeding is manifestly actuated with mala fide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.

17. The question, therefore, is whether the complainant had at all made out a prima facie case for the issuance of process against the respondents/A-1 and A-2?

18. The essence of offence of defamation is the harm caused to the reputation of a person. Character is what a person actually is and reputation is what neighbours and others say he is. In other words, reputation is a composite hearsay and which is the opinion of the community against a person. Everyone is entitled to have a very high estimate of himself as the complainant does, in this case but reputation is the estimation in which a person is held by others. The commission of offence of defamation or publishing any imputations concerning any person must be "intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person"(Emphasis supplied). The ingredients of Section 499/500

I.P.C. are (i) there must be a making or publication; (ii) that what is made or published must amount to words, signs or visible representation; (iii) that what is made or published must be an imputation and (iv) it must be made with the intention to harm or with knowledge that it will harm the reputation of another. In other words, the first and foremost ingredient of the offence of defamation is the making or publication of the defamatory statement. Admittedly, none of the persons to whom defamatory statements were conveyed by the respondents/A-1 and A-2 have come forward to say that indeed the respondents/A-1 and A-2 had conveyed the said defamatory statements to them and therefore it could not be said that the complainant had produced any prima facie evidence either of making or publication of the said statements. Complainant's statement that the defamatory statements were made to the said so called seekers was clearly inadmissible as hearsay, in absence of they having been examined as witnesses. The submission that they would be examined in future is no consolation when their examination was required to establish the ingredients of the offence. Since prima facie proof of the very first ingredient was lacking, it could not be said that the complainant had prima

facie proved that the respondents/A-1 and A-2 had committed the offence of defamation. In this view of the matter, no process could have been issued by the learned Magistrate. The Order quashing the issue of process therefore could not be faulted.

19. As a result, I find that there is no merit in these petitions. Consequently, the same are hereby dismissed, with costs.

N. A. BRITTO, J.

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